IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.46 of 1999 with
Cross Objection No.80 of 1999.

Reserved on:16.07.2007.

Decided on: August 24, 2007

Land Acquisition Collector ***.....Appellant.***

VERSUS

Om Parkash & Anr. ***.....Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant:	**Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G.**
For the Respondents:	**Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate.**

Kuldip Singh, Judge

This judgment shall dispose of RFA No.46 of 1999 along with Cross Objection No.80 of 1999 arising out of award dated 30.4.1998 passed by learned District Judge (F), Shimla in Reference No.5-S/4 of 1985. The parties are referred in the same manner as in the impugned award.

2. The brief facts of the case are that Commissioner – cum- Secretary (Industries) Himachal Pradesh issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') on 18.11.1980 for acquiring land comprised in Khasra

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

No.5363/2, 5379 and 5363/1 measuring 7 Bighas 6 Biswa, situated in village Nehnar, Tehsil Jubbal, District Shimla, Himachal Pradesh. The land was intended to be acquired along with building / structure standing on Khasra No.5363/2 measuring 15 Biswas and orchard on area measuring 4-8 Bighas comprised in Khasra No.5379. The Collector made the award on 28.2.1983 and awarded Rs.2,27,991.30 compensation for land comprised in Khasra No.5363/2 and Khasra No.5379 and a house and fruit bearing trees standing thereon. The Collector refused to award compensation to Om Parkash petitioner for land measuring 1-13 Bighas comprised in Khasra No.5363/1. The Collector did not allow 15% compulsory acquisition charges for the reasons that the building under acquisition was already with R.I.T.I. Jubbal on rental basis.

3. The petitioners filed reference petition under Section 18 of the Act against the award dated 28.2.1983 of the Collector. One set of petition was filed by Om Parkash petitioner claiming Rs.33,000 compensation for land measuring 1-13 Bighas comprised in Khasra 5363/1 on the ground that he is exclusive owner in possession of the land and orchard comprised in Khasra No.5363/1. He has claimed Rs.62,500 for the fruit trees. In all he has claimed Rs.95,500 for the land and orchard comprised in Khasra No.5363/1 measuring 1-13 Bighas. He has also claimed 15% compulsory acquisition charges over and above Rs.95,500.

4. Both the petitioners filed jointly another set of petition regarding rest of the acquired land and built up area along with fruit bearing trees. They have claimed Rs.4,93,580 compensation for house alone in addition to Rs.2,50,000 for trees standing on the acquired land and Rs.1,46,000 for the land. Thus, they have claimed a total amount of Rs.8,89,580 compensation along with other statutory payments.

5. The Collector contested the claim of the petitioner Om Parkash and has submitted that claim of Om Parkash petitioner with respect to compensation for land and trees situated on Khasra No.5363/1 has been rightly rejected. The second set of petition filed by both the petitioners was also contested by the Collector. The learned Additional District Judge (2), Shimla in Land Reference No.5-S/4 of 1985 awarded a sum of Rs.3,58,340.60 additional compensation for the joint property, Rs.33,093.10 to Om Parkash petitioner for land comprised in Khasra No.5363/1. In addition to that, 9% and 15% interest was also awarded on the enhanced compensation. The award dated 24.6.1986 was assailed in RFA No.299/1986 in which cross objection No.94/1987 was also filed. RFA No.299/1986 and Cross Objection No.94/1987 were decided by this Court vide judgment dated 26.6.1997. This Court set aside the award in case No.5-S/4 of 1985 dated 24.6.1986 and remanded the case to District Judge, Shimla. The parties led more evidence after remand.

6. The learned District Judge ultimately awarded Rs.5,93,580 for land, trees, building standing on Khasra Nos.5363/2 and 5379, Rs.26,400 for land comprised in Khasra No.5363/1. In all, Rs.6,19,980 compensation was awarded by learned District Judge. On the amount of Rs.6,19,980 other statutory payments, as detailed in the impugned award, have also been awarded. The Collector has filed the appeal against the enhancement of compensation allowed by learned District Judge. The petitioners have filed Cross Objection and they have submitted that less compensation has been awarded to them for the fruit trees.

7. I have heard learned counsel for the parties and gone through the record. The learned Advocate General has submitted that excess compensation has been awarded by the learned District Judge to the petitioners. The petitioners are not entitled to Rs. 4,93,580/- for building, Rs.1,00,000/- for fruit bearing trees and Rs. 26400/- for the land. The learned Senior Counsel representing the petitioners has submitted that less compensation has been awarded by the learned District Judge to the petitioners and, therefore, the petitioners have filed cross-objection. The petitioners are entitled to Rs.3,69,139.80 towards market value of fruit trees over and above, already awarded to them by the learned District Judge.

8. AW-1 Ranvir Singh, *Numberdar* village Chamaru, has stated that he has seen the land in question. He has purchased 3

Biswas land in a village near Chamaru in Devra Chak for a consideration of Rs.2400 for construction of a house vide sale deed, copy Ext.A-1, his land is 1-2 kilometres from the disputed land. AW-2 Ram Dass has stated that he has sold some land vide sale deeds Ext.A-2 and Ext.A-3. The sold land is at a distance of less than 1 Kilometer from the disputed land.

9. AW-4 Jia Lal is the father and power of attorney holder of Om Parkash. He has stated that land measuring 1-13 Bighas is owned by Om Parkash, Ext.AW-4/B is the copy of mutation conferring ownership of 1-13 Bighas land on his son Om Parkash. The other piece of land measuring 5-15 Bighas owned by his nephew Lokeshwar Chand and his son is adjacent to 1-13 Bighas land. The building was constructed 30-40 years back. The fruit trees were there on the acquired land. The Government had earlier taken on rent joint land and exclusive land of his son Om Parkash for running an Industrial Training Institute. He has produced copies of sale deeds Ext.AW-4/N, Ext.AW-4/O and Ext.AW-4/P of land transactions which took place in that area. He has stated that the acquired land is of same type as land covered in sale deeds Ext.AW-4/N, Ext.AW-4/O and Ext.AW-4/P. The land and building was purchased in the year 1977. There are 22 rooms in the building. The value of land at the time of notification was not less than Rs.20,000-25,000 per Bigha.

10. AW-5, S.P.Kapoor, Retd. Superintending Engineer, H.P. PWD, has referred and proved through his statement valuation report Ext.AW-5/A regarding building along with statements Ext.AW-5/B, Ext.AW-5/C and Ext.AW-5/D attached with the report but on the documents the Mark has been put as Ext.PW-5/A, Ext.PW-5/B, Ext.PW-5/C and Ext.PW-5/D. In cross examination, he has stated that he remained on the spot for three days in connection with the inspection / valuation work from 15.10.1981 to 17.10.1981 and then worked for 20 days in his office to do the calculations and to prepare the final report.

11. AW-6, S.R.Mahantan, has stated that he had been working as Director Land Records, Inspector General Registration and Director of Consolidation in the H.P. State. He is registered valuer for horticultural land. He has visited and seen the land of the claimants. He has prepared assessment report Ext.AW-6/A and according to him, total value of land and trees is Rs.3,96,000. The total area of the land is 7-6 Bighas and value of land as per his assessment is Rs.1,46,000. The total value of the fruit produced in a year was worked to Rs.25,000 and after allowing 50% cultivation, maintenance and marketing charges, the net profit or income comes at Rs.12,500/-. This amount was multiplied by 20 years purchase. There were 82 trees in all on the land. The land measuring 1-13 Bighas is not recorded in the ownership of the claimant Om Parkash

but he has worked out its cost also and included the same in his report Ext.AW-6/A.

12. The statement of PW-1 Tilak Raj Chadha was recorded by District Judge after the case was remanded by this Court. He has proved report Ext.PW-1/A. He has stated that he is Ph.D. in Horticulture from Indian Agriculture Research Institute, New Delhi. He has retired as Director Research from Y.S. Parmar University of Horticulture and Forestry, Solan after putting 40 years of service. He has stated that he has visited the site of the petitioners on 22.8.1997 and has prepared his report Ext.PW-1/A. As per calculations drawn by him, the total net return from trees worked out to Rs.4,71,873.15. In cross examination, he has stated that when he visited the spot, the apple trees were not in existence on the spot.

13. The statements of Ram Dass and Jia Lal were recorded after remand again as PW-2 and PW-3. PW-2 Ram Dass has proved sale deed Ext.PW-2/A (earlier Ext.AW-4/N) in favour of Attar Singh. He sold another land vide Ext.PW-2/B (earlier Ext.AW-4/O) to Chaman Singh and Pritam Singh. He vide another sale deed dated 20.2.1975 Ext.PW-2/C (earlier Ext.AW-4/P) sold three Biswas of land to Ranvir Singh. He has stated that the consideration amounts mentioned in sale deeds Ext.PW-2/A to Ext.PW-2/C were the prevalent market price of the sold land.

14. PW-3 Jia Lal has stated that he is power of attorney holder of his son Om Parkash petitioner. He has proved mutation Ext.PW-3/B (earlier Ext.AW-4/B) of land measuring 1-13 Bighas of land. He has stated that there is a three storey building on the acquired land having 22 rooms. The acquired building was got inspected by S.P.Kapoor, Retd. Superintending Engineer and his report to this effect is Ext.PW-5/A, abstract of cost is Ext.PW-5/B. Less compensation has been paid to the petitioners. T.R. Chadha inspected the acquired land and prepared his report Ext.PW-1/A and the petitioners should be paid compensation of the trees as per Ext.PW-1/A which comes out to Rs.4,71,873. The acquired land is comparable with the land covered by sale deeds Ext.PW-2/A to Ext.PW-2/C.

15. RW-1 H.K.Anand, Executive Engineer, IPH, Mandi has stated that he remained posted as Executive Engineer, H.P. PWD, Jubbal from 1979 to 1983. He got the valuation of the building done through his staff and valuation report to this effect is Ext.R-1 with enclosures Ext.R-1/A to Ext.R-1/E. The report Ext.R-1 is signed by him. According to him, the value of the building in the year 1981 was Rs.1,55,137. In cross examination, he has stated that he had done only 10% verification of the report of the field staff. He has stated that he could not say if there is a retaining wall dividing the

field on which the house is constructed from another field and the value of that retaining wall has not been taken into consideration.

16. Ravi Parkash, Senior Assistant, Directorate of Technical Education, Sunder Nagar, District Mandi, has appeared as witness and he has also been shown as RW-1 in the record. He has placed on record Ext.RW-1/A letter dated 1.7.1980 of Parkash Dilta addressed to Director Industries. He has also placed on record letter dated 9.10.1980 Mark RW-1/B. The Additional District Attorney has placed on record Jamabandis for the year 1982-83 of Mauza Nehnar Ext.R-1, Ext.R-2 and copy of *Misal Hakiyat Bandobast Jadid* Ext.R-3.

17. AW 5 S.P.Kapoor, has proved valuation report Ext.PW-5/A, dated 1.12.1981. He has assessed the fair market value of the property as on 18.11.1980. The valuation has been done as per 1979 schedule of rates of HPPWD on which sanctioned cost index has been added. As per report Ext.PW-5/A, cost of acquisition of property comes out to Rs.4,93,580/-. AW-5 has stated that he remained on spot for three days and then took twenty days for preparing the report. RW 1 H.K.Anand, Executive Engineer has proved valuation report Ex. R-1 of the acquired building. As per Ex. R-1, the value of the building in 1981 was Rs. 1,55,137/-. RW 1 has stated that valuation of the building was got done by him, through his staff. He has done only 10% verification of

the report of the field staff. As per RW 1, the valuation of the building was done in the year 1981 on the basis of schedule of rates of 1979. He has not stated that while preparing report Ex.R-1, increase in cost from 1979 to 1981 was taken into consideration, nor he has stated that from 1979 to 1981, the prices of building material remained static. It is common knowledge that cost of construction is increasing day by day. RW 1 himself has not prepared the report Ex. R-1, on the contrary he got prepared report Ex. R-1 from his field staff and he has only verified 10% of the report. The verification of 10% report may be sufficient for complying government instructions, but for the purpose of present case, it cannot be said that report Ex. R-1 has been prepared by RW 1. In these circumstances, report Ex. R-1 cannot be relied for assessing the market value of the acquired building. The respondents have placed nothing on record by way of legal evidence to show that report Ex. PW 5/A prepared by S.P.Kapoor is incorrect. S.P.Kapoor is a retired Superintending Engineer, he inspected the site for three days and thereafter took twenty days for preparation of the report. The learned District Judge has rightly relied report Ex. RW 5/A for assessing the market value of building at Rs.4,93,580/-, which is upheld.

18. It has come on record that 82 fruit bearing trees were there on the acquired land and the Collector had awarded

Rs.41,592.45P for fruit trees, as assessed by the Horticulture Department. The petitioners have claimed compensation of fruit bearing trees and that of the land under the trees separately. In RFA No. 299 of 1986, this court earlier remanded the case and set-aside the award dated 24.6.1986, in view of law laid down by Hon'ble Supreme Court in **Ratan Kumar Tandon and others vs. State of U.P.** [1997 (2) SCC 161], **State of Haryana vs. Gurcharan Singh and anr etc.** [1995 (Supp.) 2 SCC 637] that the valuation of the trees and land cannot be done separately.

19. PW 6 S.R.Mahantan, in his report Ex. AW 6/A has assessed the market value of land measuring 7 bighas 6 biswas at Rs.1,46,000/- and that of fruit bearing trees at the rate of Rs.12,500/- per year and after applying multiplier of 20 years produce he assessed Rs.2,50,000 (12,500 x 20) compensation for the fruit trees. In all, he has assessed Rs.3,96,000/- (Rs.1,46,000 + Rs.2,50,000) for the land and trees. In **State of Haryana vs. Gurcharan Singh and anr etc.** (supra), it has been held that under no circumstances, the multiplier should be more than 8 years. Therefore, after applying the norms adopted by S.R.Mahantan for assessing the compensation of fruit trees the compensation for fruit trees comes Rs.1,00,000/- (Rs.12500 x 8). The report Ex. PW 1/A of PW 1 Tilak Raj Chadha is dated 1.9.1997. He has admitted in his statement that the land was acquired in the year 1980. He visited

the spot on 22.8.1997 and when he visited the spot, the apple trees were not at the spot. Therefore, report Ex. PW 1/A is not in accordance with the factual position at site and cannot be relied for assessing the compensation for fruit trees. The learned District Judge has rightly assessed the compensation of fruit trees at Rs.1,00,000/-.

20. AW 4 Jia Lal was also examined as PW 3 and he has stated that at the time of issuance of notification, the value of land was not less than Rs.20000/- to Rs.25000/- per bigha. The sale deed Ex. PW 2/A, dated 17.6.1976 is of 5 biswas of land, which was sold for a consideration of Rs.4000/- in Mauja Devra. The sale deed Ex. PW 2/B dated 4.6.1979 is of 6 biswas of land in Chak Devra which was sold for a consideration of Rs. 3500/- and vide sale deed Ext.PW 2/C dated 20.2.1975, 3 biswas of land in Chak Devra was sold for a consideration of Rs. 2400/-. These sale deed were executed much prior to notification, under Section 4 of the Act, which was issued on 18.11.1980. There is nothing on record to show that these sale deeds were executed in order to enhance the market value of the acquired land. The sale deed Ex. PW 2/A, Ex. PW 2/B and Ex. PW 2/C are genuine sale transactions. The land comprised in khasra No. 5363/1 is measuring 1 bigha 13 biswas and it cannot be considered as large area. As per sale deed Ex. PW 2/A, the market value comes to Rs. 16000/- per bigha or say

Rs. 800/- per biswa. Therefore, Om Parkash petitioner is entitled to market value of land measuring 1 bigha 13 biswas at the rate of Rs. 16000/- per bigha, which comes to Rs. 26400/-. The market value assessed by the learned District Judge of land comprised in khasra No. 5363/1 is just and reasonable, which requires no interference and is upheld.

21. The result of the above discussion is that appeal being RFA No. 46 of 1999 and the cross-objection No. 80 of 1999 are dismissed with no order as to costs.

August 24, 2007 ***(Kuldip Singh)***
(soni/Hem) ***Judge.***